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THE CONTRACT DISPUTES ACT AMENDMENTS OF 1986

JULY 31 (legislative day, JULY 28), 1986.—Ordered to be printed

Mr. ROTH, from the Committee on Governmental Affairs, submitted the following

REPORT

ORIGINAL

[To accompany S. 2426]

The Committee on Governmental Affairs, to which was referred the bill (S. 2426) to amend the Contract Disputes Act of 1978 to require that a competitive examination process shall be used for the selection of members of Boards of Contract Appeals of Federal Government agencies; to provide that the members of such boards shall be treated in the same manner as Administrative Law Judges of the Federal Government for certain administrative purposes; and to revise the procedures for the collection of claims under Federal Government contracts, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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I. Purpose

The purpose of S. 2426, the Contract Disputes Act Amendments of 1986, is to enhance the independence and timeliness of the contract dispute process, first, by providing protections for Administrative Judges who serve on agency Boards of Contract Appeals to insulate them from agency control and, second, by imposing reasonable deadlines for submitting contractor claims and for appealing contracting officers' decisions.

II. Background and Need for Legislation

In 1978, Congress enacted the Contract Disputes Act (P.L. 95–563; 41 U.S.C. 601 *et seq.*), which governs the submission of contract claims to the government and the resolution of disputes arising from those claims. While the disputes process has generally operated effectively since enactment of the Contract Disputes Act (CDA), concerns have been raised by government officials and government contractors over the independence and timeliness of the contract disputes process.

S. 2426, the Contract Disputes Act Amendments of 1986, is designed to address these concerns. The provisions of S. 2426 are drawn from two separate pieces of legislation: S. 2223, the Board of Contract Appeals Independence Enhancement Act, and S. 2006, the Contract Disputes Act Amendments of 1985. These bills were circulated widely for comment to numerous government and industry experts, revised to incorporate the comments received, and subsequently consolidated into a single bill, S. 2426.

Independence

Under the CDA, agency Boards of Contract Appeals (BCAs) are authorized to serve as independent, adjudicative forums for resolving contract disputes. Currently, there are 12 BCAs, ranging in membership from the Armed Services Board of Contract Appeals with 33 Judges to the National Aeronautics and Space Administration Board of contract Appeals with three Judges.

The CDA provides that BCA Judges shall be "selected and appointed to serve in the same manner" as Administrative Law Judges (ALJs) appointed pursuant to the Administrative Procedure Act. Implementation of the CDA, however, has resulted in significant differences. BCA Judges are selected by the individual agencies on whose boards they serve and, because the CDA is not specific on removal protections, may be dismissed without any independent review. ALJs, by contrast, are selected from a government-wide register established by the Office of Personnel Management (OPM) and may only be removed for good cause after a hearing before the Merit Systems Protection Board.

These differences, according to the General Accounting Office, contribute to the perception that BCA Judges are not as independent as ALJs. In a September 1985 report (NSIAD–85–102), the GAO found that:

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> Because no independent body, like the OPM, issues government-wide regulations for the selection and appointment of board members, and because the [Contract Disputes Act] is unclear concerning any removal protections, members of boards of contract appeals are not as insulated as they could be from agency control.

The selection and appointment procedures for BCA Judges, while similar in many respects to the OPM procedures for ALJs, are of concern to the Committee. According to the legislative history underlying the CDA, the ALJ system was to be used as a model for developing and implementing a system to ensure the independence of the BCA Judges.

The CDA, however, falls short of establishing an ALJ-like system as there is no requirement that a separate agency, such as OPM, select, administer, and maintain a register of persons qualified for appointment to the BCAs. The interagency registers originally established and currently maintained by the Department of Defense and the General Services Administration continue to be used by the agencies as the primary sources for filling their vacancies. Agencies select candidates for their boards under procedures that need only comply with the eligibility requirements of the CDA, thereby raising concerns about the independence of the Judges who are charged with ruling on disputes between the agencies and their contractors.

Arbitrary removal is also of concern to the Committee, since the threat alone could potentially compromise the independence of BCA Judges. Arbitrary removal is by no means common practice, but it has happened. The GAO report, for example, points out that in 1978, the chairman and vice-chairman of the General Services Board of Contract Appeals were discharged without satisfactory explanation. While this incident may have been an isolated case, the threat, nonetheless, exists.

To alleviate the perception that BCA Judges are not sufficiently insulated from agency control, the GAO recommended that "the Congress may want to consider amending the Contract Disputes Act of 1978 . . . to give the Office of Personnel Management and the Merit Systems Protection Board roles in [the BCA Judges' selection and removal] processes."

On March 17, 1986, Senators William S. Cohen and Carl Levin, chairman and ranking minority members, respectively, of the Committee's Oversight of Government Management Subcommittee, introduced legislation (S. 2223) to implement the GAO's recommendation. This legislation, which is the predecessor to S. 2426, provided that BCA Judges would be subject to the competitive examination process applicable to ALJs, and would extend to BCA Judges the protection that they may be removed only for good cause after a hearing before the Merit Systems Protection Board.

S. 2223, the Boards of Contract Appeals Independence Enhancement Act of 1986, was circulated for comment to the following agencies and organizations: the Office of Federal Procurement Policy, the Office of Personnel Management, the Department of De-

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fense, the General Services Administration, the National Aeronautic and Space Administration, the Armed Services Board of Contract Appeals, the General Services Board of Contract Appeals, the NASA Board of Contract Appeals, the General Accounting Office, the Public Contract Law Section of the American Bar Association, the Federal Bar Association, and the National Conference of Boards of Contract Appeals Members.

While all of these organizations expressed support for S. 2223, they recommended changes to strengthen the bill. Several of the agencies and organizations recommended, for example, that S. 2223 be amended to afford BCA Judges all of the statutory protections applicable to ALJs, in addition to the ones already provided in S. 2223. This recommendation, as well as several others, has been included in S. 2426.

Timeliness

Concerns have also been raised, principally by government officials, over the timeliness of the contract disputes process. Under the CDA, there currently is no statute of limitations for the submission of contractor claims, except for Navy shipbuilding claims. The Justice Department has consequently found that contractors often wait years before submitting claims for payment, thereby making adjudication of disputes difficult.

The General Accounting Office discussed the need for a time limitation on the submission of contractor claims in a January 1983 report (PLRD-83-37) assessing Admiral Rickover's recommendations to improve defense procurement. According to the GAO report, Admiral Rickover raised concerns that the lack of a time limit on the submission of claims provides an incentive to contractors to "delay submitting claims because it enables them to 'wait out' personnel turnover, obfuscate issues, and frustrate government analysis of the claim." His solution was for Congress to establish a one-year statute of limitations on the submission of contractor claims.

Both the GAO and the Department of Defense agreed with Admiral Rickover's recommendation that such a time limitation was necessary, although neither agreed to his recommended time period. The GAO stated in its January 1983 report that the "the delay allowed for claims submission has undoubtedly been a major factor in the inability to settle claims and enactment of a time limit should help."

In September 1983, the Senate enacted as part of the fiscal 1984 Department of Defense Appropriations Bill (P.L. 98-212) a provision imposing an 18-month statute of limitations on all contractor claims "arising from events" for which the government may be responsible. This provision, which extended only through the fiscal year, was compromised in conference to apply to shipbuilding claims. In June 1984, the Senate subsequently adopted as part of the fiscal 1985 Department of Defense Authorization Bill (P.L. 98-525) a provision that made the 18-month statute of limitations for shipbuilding claims permanent law.

The Committee notes that, during floor consideration of the DoD Authorization bill, both Senator Ted Stevens and Senator Sam Nunn, chairman of the Defense Appropriations Subcommittee and

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ranking minority member of the Armed Services Committee, respectively, expressed support for establishing a generic statute of limitations that applied to all defense contractor claims, not just to shipbuilding claims.

This Congress, the Administration included as part of its management initiatives a legislative proposal for a generic 18-month statute of limitations for all contractor claims. On January 22, 1986, Senator William V. Roth, Jr. introduced, by request, this portion of the package as S. 2006, the Contract Disputes Act Amendments of 1985. The Committee held a hearing on February 26 to consider the Administration's management initiatives and received testimony from the Office of Management and Budget and the General Accounting Office. The Oversight Subcommittee, which had referral over S. 2006, also requested comments from several other organizations, including the ABA Public Contract Law Section.

The testimony and comments received were again, supportive of the legislation, but recommended changes. The statute of limitations, for example, was subject to much debate concerning the length of the filing period and the starting date for when this period should begin. S. 2006 was modified to reflect these comments and subsequently merged into S. 2426.

Proposed Solution

On May 8, Senators Cohen and Levin introduced new legislation, S. 2426, the Contract Disputes Act Amendments of 1986, to remedy the concerns raised over the independence and timeliness of the contract disputes process. Title I incorporates language from S. 2223, the Board of Contract Appeals Independence Enhancement Act, that provides protections for Administrative Judges who serve on agency BCAs to insulate them from agency control. Title II adopts revised language from S. 2006, the Contract Disputes Act Amendments of 1985, that imposes reasonable deadlines for submitting contractor claims and for appealing contracting officer's decisions.

On May 15, the Oversight Subcommittee approved S. 2426 unanimously. The Governmental Affairs Committee subsequently ordered the bill reported on June 25, again unanimously.

III. Provisions of S. 2426

TITLE I: PROFESSIONAL INDEPENDENCE OF BCA JUDGES

Competitive Service

S. 2426 clarifies that BCA Judges, like ALJs, would be placed in the competitive service, subject to the competitive examinations conducted by the Office of Personnel Management. Concern had been raised that the previous bill, S. 2223, was unclear about whether BCA Judges would be placed in the competitive service. S. 2426 clarifies any ambiguity by amending the bill to read (changes in italic):

> . . . members of agency boards shall be *in the competitive service,* selected *pursuant to the competitive examination process under subchapter I of chapter 33 of title 5, United States Code,* and appointed . . .

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The Committee intends, moreover, that individuals selected from the OPM register for appointment as BCA Judges would be career absolute appointments, as are ALJs. This stipulation is necessary becasue it has long been recognized that probationary on career-conditional appointments are incompatible with the judicial function and with the exercise of decisional independence.

Examination and Register

The comments received also recommended that the examination for BCA Judges should take into consideration the requirement under the Contract Disputes Act for five years public contract law experience, and also that those candidates qualified to serve as BCA Judges should be placed on a register separate from ALJs. To implement these recommendations, S. 2426 requires that:

> Such competitive examination shall be designed to demonstrate, among other appropriate qualifications, the applicant's public contract law experience. A separate register shall be established and maintained for candidates eligible for appointment to such boards.

The ABA Public Contract Law Section believes this provision is particularly important, according to a June 11, 1986, letter to Senator Cohen from Section President James Myers, as it will "insure that professionally competent individuals with specific subject-matter experience are appointed as BCA members." Public contract law, according to the Section," is sufficiently complex to require this additional expertise."

Delegation of Competitive Examination

Under present law (5 U.S.C. 1104), OPM is authorized to delegate its responsibilty for admimistering competitive examinations to the heads of other agencies. Section 1104(a)(2) of title 5, however, prohibits the delegation of this responsibility in the case of competitive examinations for ALJs.

Absent specific language prohibiting the delegation of responsibility for examining BCA Judges, the bill could be construed to permit the individual agencies to operate and manage the selection process for members of their BCAs. The result, according to an April 22, 1986, letter to Senator Cohen from Judge Carroll Dicus, President of the National Conference of Boards of Conference Appeals Members, "would be that the independence of members of boards of contract appeals from their sponsoring agency management would be compromised and the bill would not accomplish its intended purpose."

The Committee agrees and believes that this prohibition should apply to the selection of BCA Judges. S. 2426, therefore contains such a provision.

Removal and Performance Protections

In order to ensure that BCA Judges are truly insulated from agency control, S. 2426 extends to them the full panoply of ALJ protections. Perhaps most important of these protections is the removal protection (5 U.S.C. 7521) that provides that a BCA Judge may only be removed for good cause after a hearing before the

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Merit Systems Protection Board. Additional protections provided under S. 2426 include exemption from performance evaluations (5 U.S.C. 4301), guarantee of periodic step increases (5 U.S.C. 5335), and permission for reemployment in certain cases (5 U.S.C. 3323(b)(2)).

The Committee believes that these protections are crucial for ensuring the decisional independence of the BCA Judges.

Grandfathering Incumbents

Finally, the American Bar Association Public Contract Law Section strongly recommended that present BCA Judges should be "grandfathered." Aside from the administrative expense of having to qualify the existing BCA Judges, the Committee agrees with the ABA that it would be inappropriate to subject existing BCA Judges to an examination. S. 2426, therefore, specifies that numbers of agency Boards of Contract Appeals serving on the date of enactment shall be considered to have been examined, selected, and appointed in accordance with the Contract Disputes Act of 1978, as amended by this legislation.

Together, the provisions of title I provide the security needed to ensure the independence of the BCA Judges in adjudicating contract disputes.

Senator Cohen received several letters from organizations, expressing their support for the legislation. In a June 3 letter, Harry Van Cleve, General Counsel of the General Accounting Office, stated:

> We are pleased that the language of S. 2426 addresses the concerns about the independence of BCA members identified in our earlier report, and that it addresses the technical concerns raised in our earlier letter.

James Myers, Chairman of the ABA Public Contract Law Section of the American Bar Association, wrote in the June 11 letter to Senator Cohen:

> S. 2426 has been drafted to guarantee expressly that BCA members are appointed strictly on the basis of merit, and that in conducting proceedings and deciding cases they would not be subject to direction or control by procuring agency management authorities. The express authorization of this procedure is essential to insure and maintain fairness and competency in the hearing examiner system.

Judge Carroll Dicus, President of the National Conference of Boards of Contract Appeals Members, endorsed S. 2426 in a May 16 letter to Senator Cohen:

> S. 2426 would strengthen the independence of the boards by treating administrative judges serving on boards the same as administrative law judges. It is the best vehicle yet proposed for accomplishing the original goals of the Contract Disputes Act of 1978 regarding performance and tenure. The Conference strongly supports its enactment.

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Finally, Judge Joseph Kennedy, writing on behalf of the Committee on the Administrative Judiciary of the D.C. Chapter of the Federal Bar Association, stated in a May 15 letter to Senator Cohen:

> S. 2223 as revised and reintroduced as S. 2426, the Contract Disputes Act Amendments of 1986, incorporates the objectives expressed to you in our [previous] letter. . . . Accordingly, this is to advise you that we support S. 2426.

TITLE II: CLAIMS BY FEDERAL GOVERNMENT CONTRACTORS

Statute of Limitations for Submitting Claims

S. 2426 amends the CDA to require contractors to submit claims to a contracting officer for resolution within 36 months of the first date on which such claim could have been submitted. In establishing a limitation for the submission of contractor claims, the Committee deliberated carefully over the length of the limitation and the starting date from when it should run.

While the Committee believes that an 18-month statute of limitations for the submission of contractor claims—as currently prescribed by law for shipbuilding claims and originally proposed in the Administration's bill—is fair and workable, the Committee settled on a 36-month limitation as a compromise between those who support a shorter time period, those who advocate a longer one, and those who oppose any limitation.

According to the January 1983 GAO report, Admiral Rickover, for one, believed that a one-year statute of limitations was necessary because contractors otherwise "wait several years to determine whether or not a particular contract was profitable and, if not, go back and establish items which they could claim were changes that added work or delayed completion."

Current law, as previously mentioned, provides for an 18-month deadline of the submission of shipbuilding claims. In the legislative history accompanying this provision, the Senate Armed Services Committee reported that an 18-month statute of limitations for shipbuilding claims is a "sufficient time for contractors to assess the consequences of an event, assemble all pertinent documentation to support their claimed amount, and submit this documentation with their claim properly certified as provided in the Contract Disputes Act of 1978."

Earlier this year, the Administration proposed that this 18-month statute of limitations apply across-the-board to all contractor claims. In testimony before the Governmental Affairs Committee on the Administration's bill, S. 2006, Charles Bosher, the Comptroller General, supported an 18-month deadline for the submission of contractor claims.

The Public Contract Law Section of the American Bar Association, however, contends that an 18-month statute of limitations is "an unrealistically short period for submission of claims, especially where complex contractual arrangements and complex facts are involved." The Section believes that, at a minimum, any limitation period should be substantially longer than 18 months. In the June 1986 letter to Senator Cohen, Mr. Myers stated that:

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> It would be preferable for the Committee to extend the statute of limitations in section 201 [of S. 2426] to four years, although three years would be acceptable if made applicable to contractors and the government.

In light of these disparate positions, the Committee sought to reach a middle ground in balancing the needs of the government against those of the contractor. The GAO, in its January 1983 report, summarized some of the factors that the Committee considered in reaching this balance.

> The shorter the time limit, the greater the probability of numerous "protective filings" by contractors. The risk could be reduced by an increased time limit, but if it is too lengthy, there would be no assurance of timely claims submissions.

The Committee believes that a 36-month statute of limitations achieves an appropriate balance.

Of equal import is the starting date on which the statute of limitations begins to run. S. 2426 states that the period for submitting claims to the government begins "the first date on which the claim could have been submitted." The Committee intends that the interpretation of this starting date should parallel, not alter, the interpretation of the "arising out of events" starting date provided in current law for shipbuilding claims. In the case of government furnished equipment, for example, the reasonable and appropriate interpretation of "the first date on which the claim could have been submitted" is when a defect in the equipment is discovered, not when the equipment was received.

Uniform Time Periods for Appeal

The second provision of this title establishes a uniform time period of six months within which a contractor may appeal a contracting officer's decision to either the Court of Claims or a Board of Contract Appeals. A contractor currently has 12 months to appeal a contracting officer's decision to the court or 90 days to appeal to a BCA. The Administration originally recommended that these inconsistent time periods be eliminated by requiring either appeal to be made within 90 days. The Committee believes that, while 90 days is sufficient time to file an appeal before a BCA, it is insufficient time to submit a fully articulated complaint to the Court of Claims. The Committee, therefore, settled on a uniform time period of six months.

IV. Conclusion

Ensuring the independence of the BCA Judges and improving the timeliness of the submission of contractor claims are steps that would strengthen the contract disputes process. The Committee believes it is important to note, however, that its criticism of the present BCA system should not be interpreted as an indictment against those Judges now serving on the various boards. Clearly, the decisional history of these boards demonstrates the integrity of the Judges who serve on them. By providing BCA jusges with statutory protections, the Committee believes that purlic confidence in

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the independence and impartiality of these adjudicators would be enhanced. Enactment of this legislation would improve the contract disputes system by ensuring the decisional independence of BCA judges and by promoting uniformity and timeliness in the filing of claims.

V. Section-by-Section Analysis

The short title of this bill is the Contract Disputes Act Amendments of 1986.

TITLE I

Section 101 of Title I amends the CDA (41 U.S.C. 607(b)(1)) by setting forth statutory protections for the BCA Judges.

This section clarifies that CBA Judges are in the competitive service, subject to the competitive examination conducted by the Office of Personnel Management. The section further stipulates that the competitive examination is to be deigned to demonstrate the applicant's public contract law experience, as required under the CDA, and that a separate register is to be established and maintained for eligibile candidates.

Finally, section 101 extends to the BCA Judges a list of protections currently afforded to ALJs. These protections include: prohibition against redelegation of examination responsibility (5 U.S.C. 1104(a)(2)), permission for reemployment in certain cases (5 U.S.C. 3323(b)(2)), exemption from performance evaluations (5 U.S.C. 4301(2)(D)), guarantee of periodic step increases (5 U.S.C. 5335(a)), and removal only for good cause after a hearing before the Merit Systems Protection Board (5 U.S.C. 7521).

Section 102 of Title I "grandfathers" existing BCA Judges serving on the date of enactment of this bill.

TITLE II

Section 102 of Title II amends the CDA (41 U.S.C. 605(a)) to impose a 36-month statute of limitations on the submission of contractor claims to the government. The starting date for this statute of limitations is the first date on which the claim could have been submitted under the contract.

Section 202 amends the CDA to establish a uniform time period of six months for appealing a contracting officer's decision either to a BCA (41 U.S.C. 606) or to the Court of Claims (41 U.S.C. (609(a)(3)).

Section 203 sets forth the effective dates.

VI. Estimated Cost of Legislation

(Included)

VII. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee has considered the resultory and paperwork impact of S. 2426, the Contract Disputes Act Amendments of 1986.

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S. 2426, as reported, is designed to enhance the independence and improve the timeliness of the contract disputes process. The Committee does not believe that this legislation will result in any regulatory impact and does not foresee any significant paperwork impact.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 29, 1986.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Governmental Affairs, U.S. Senate, 340 Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2426, the Contract Disputes Act of 1986, as ordered reported by the Senate Committee on Governmental Affairs on June 25, 1986. CBO estimates that enactment of this bill would result in no significant costs or savings to the federal government and would not affect the budgets or state or local governments.

The bill would require federal agencies to use a competitive examination process to select judges for agencies' boards of contract appeals (BCA). The bill would also require BCA judges to be treated in the same manner as federal administrative law judges for certain administrative purposes. Under current law, BCA judges are selected by the agency on whose board they serve and may be removed without appeal. S. 2426 would eliminate agency responsibility for maintaining a list of candidates for BCA positions and would transfer this responsibility to the Office of Personnel Management (OPM), which currently maintains such a list for administrative law judges. In addition, BCA judges could be removed only for good cause after a hearing before the Merit Systems Protection Board. These provisions would provide protection for BCA judges to insulate them from agency control.

Based on information from OPM and several other agencies, we expect OPM could perform the additional examination and registration requirements without significant additional costs because agencies fill only one or two BCA vacancies per year. The federal government would not realize significant savings because executive agencies currently expend little effort to maintain registers of qualified candidates for BCA positions. Other provisions of the bill are not expected to result in significant costs or savings.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

VIII. VOTE IN COMMITTEE

The Committee, a quorum being present, reported S. 1134 by voice vote on June 25, 1986.

IX. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the standing Rules of the Senate, changes in existing law made by the bill, as

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reported, are shown as follows (existing law proposed to be omitted is enclosed in brackets; new matter is printed in italic; and existing law in which no changes are proposed is shown in roman):

TITLE 41. PUBLIC CONTRACTS

* * * * * * *

Chapter 9—Contract Disputes

* * * * * * *

Decision by contracting officer—Contractor claims

Section 605(a) [All claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision.] *Each claim by a contractor against the Government relating to a contract shall be in writing and shall be submitted to the contracting officer, not later than 36 months after the first date on which the claim could have been submitted under such contract, for a decision.* All claims by the government against a contractor relating to a contract shall be the subject of a decision by the contracting officer. The contracting officer shall issue his decisions in writing, and shall mail or otherwise furnish a copy of the decision to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of his rights as provided in this chapter. Specific findings of fact are not required, but, if made, shall not be binding in any subsequent proceeding. The authority of this subsection shall not extend to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another Federal agency is specifically authorized to administer, settle, or determine. This section shall not authorize any agency head to settle, compromise, pay or otherwise adjust any claim involving fraud.

* * * * * * *

Contractor's right of appeal to board of contract appeals

Section 606 Within [ninety days from] *180 days after* the date of receipt of a contracting officer's decision under section 605 of this title, the contractor may appeal such decision to an agency board of contract appeals, as provided in section 607 of this title.

* * * * * * *

Appointment of members; chairman; compensation

Section 607(b)(1)*(A)* Except as provided in paragraph (2), the members of agency boards shall be [selected] *in the competitive service, selected pursuant to the competitive examination process under subchapter I of chapter 33 of title 5, United States Code,* and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of Title 5, with an additional requirement that such members shall have had not fewer than five years' experience in public contract law. *Such competitive examination shall be designed to demonstrate, among other appropriate qualifi-*

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cations, the applicant's public contract law experience. A separate register shall be established and maintained for candidates eligible for appointment to such boards. [Full-time members of agency boards serving as such on the effective date of this chapter shall be considered qualified.]

(B) The chairman and vice chairman of each board shall be designated by the agency head from members so appointed.

(C) The chairman of each agency board shall receive compensation at a rate equal to that paid a GS–18 under the General Schedule contained in section 5332 of Title 5, the vice chairman shall receive compensation at a rate equal to that paid a GS–17 under such General Schedule, and all other members shall receive compensation at a rate equal to that paid a GS–16 under such General Schedule. Such positions shall be in addition to the number of positions which may be placed in GS–16, GS–17, and GS–18 of such General Schedule under existing law.

(D) For the purposes of sections 1104(a)(2), 3323(b)(2), 4301(2)(D), 5335(a), and 7521 of title 5, United States Code, a member of any agency board appointed under this paragraph shall be treated in the same manner as an administrative law judge.

* * * * * * *

Judicial review of board decisions—Actions in United States Court of Claims; district court actions; time for filing

Section 609(a)(1). Except as provided in paragraph (2), and in lieu of appealing the decision of the contracting officer under section 605 of this title to an agency board, a contractor may bring an action directly on the claim in the United States Court of Claims, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(2) In the case of an action against the Tennessee Valley Authority, the contractor may only bring an action directly on the claim in a United States district court pursuant to section 1337 of Title 28, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(3) Any action under paragraph (1) or (2) shall be filed within [twelve months] *180 days* from the date of the receipt by the contractor of the decision of the contracting officer concerning the claim, and shall proceed de novo in accordance with the rules of the appropriate court.

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